Supreme Court, U.S.
FILED
FEB 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1282

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

IRVING EAR, NOSE, THROAT & ALLERGY CLINIC
and HERBERT R. KASNETZ, M.D.,

Petitioners

VS.

GROUP HOSPITAL SERVICE, INC.,
GROUP LIFE & HEALTH INSURANCE COMPANY
and GROUP MEDICAL AND SURGICAL SERVICE
COMPANY, d/b/a BLUE CROSS AND BLUE
SHIELD OF TEXAS,

Respondents

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Attorneys for Petitioners

U.S. District Court
Northern District of Texas
FILED
May 8, 1984
Nancy Hall Doherty, Clerk
By _____
Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IRVING EAR, NOSE, THROAT & ALLERGY CLINIC, ET AL.

Plaintiffs

VS.

GROUP HOSPITAL SERVICE, INC., ET AL.

Defendants

Civil Action No. 3-81-1786-H

ORDER

This case is before the Court on Plaintiffs' Motion to Dismiss for Want of Jurisdiction, filed April 27, 1984; and Defendants' Response, filed May 3, 1984. This case was tried before the Court with a jury April 2-6, 1984. On April 5, 1984, the Court severed Defendants' counterclaim and ordered a separate trial thereon. On April 6, 1984, the Court granted Defendants' Motion for a Directed Verdict and dismissed Plaintiffs' suit with prejudice.

Plaintiffs' suit involved a claim for damages under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.* Defendants' counterclaim seeks attorney's fees and costs arising from Plaintiffs' state antitrust claims. Defendants'

counterclaim is brought pursuant to section 15.21(a)(3) of the Texas Business and Commerce Code. Plaintiffs withdrew their state antitrust claims before the case was tried. Defendants' counterclaim, therefore, remained only by virtue of pendent jurisdiction. Following the directed verdict and dismissal of Plaintiffs' suit, all federal claims were disposed of, and Defendants' counterclaim based on the state statute is the only remaining claim. In the absence of an independent jurisdictional basis for exercising jurisdiction over Defendants' counterclaim, the counterclaim should be dismissed without prejudice. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966); *Scranton Construction Co., Inc. v. Litton Industries Leasing Corp.*, 494 F.2d 778, 783 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

As Defendants point out, their cause of action under section 15.21(a)(3) accrued not earlier than the statute's effective date, August 29, 1983. Thus, Defendants will encounter no statute of limitations problems in refiling their claim in state court. The Court does not agree with Defendants that section 15.21(a)(3) only provides relief to counterclaimants. Rather, a fair reading of the statute precludes any such restrictive interpretation of the section 15.21(a)(3) cause of action. The Court finds that dismissal of the counterclaim without prejudice will not have an adverse impact on the litigants in this suit. *See Transource International, Inc., et al. v. Trinity Industries, Inc.*, 725 F.2d 274, 290 (5th Cir. 1984); *Hensen v. Columbus Bank and Trust Co.*, 651 F.2d 320, 325 (5th Cir. 1981).

In sum, the Court has no original jurisdiction of Defendants' non-diversity state law counterclaim and there is now no basis for exercising pendent jurisdiction. Accordingly, the counterclaim is hereby DISMISSED without prejudice for want of jurisdiction.

SO ORDERED.
DATED: May 8, 1984.

BAREFOOT SANDERS
United States District Judge

U.S. District Court
Northern District of Texas
FILED
May 8, 1984
Nancy Hall Doherty, Clerk
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

IRVING EAR, NOSE, THROAT & ALLERGY CLINIC, and HERBERT R. KASNETZ, M.D.

Plaintiffs

VS.

GROUP HOSPITAL SERVICE, INC., ET AL.

Defendants

Civil Action No. 3-81-1786-H

FINAL JUDGMENT

All matters in controversy having been disposed of by the Court's Orders dated April 6, 1984, and May 8, 1984, the Court is of the opinion that this Final Judgment should be entered.

It is therefore ORDERED, ADJUDGED and DECREED by the Court, as follows:

1. Plaintiffs Irving Ear, Nose, Throat & Allergy Clinic and Herbert R. Kasnetz, M.D., take nothing by their suit against Defendants Group Hospital, Group Life & Health Insurance Company, Group Medical and Surgical Service Company d/b/a Blue Cross of Texas, and Blue Shield of

Texas, and Plaintiffs' claims are DISMISSED on the merits at Plaintiffs' cost.

2. Defendants' counterclaim is DISMISSED without prejudice for want of jurisdiction.

3. Any other relief sought by any party in this case and not specifically granted hereby, is DENIED.

SIGNED this 8th day of May, 1984.

BAREFOOT SANDERS
United States District Judge